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# CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by the Commission of Churches on International Affairs of the World Council of Churches, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 December 2001]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The World Council of Churches (WCC) has a long history of involvement in work with uprooted people – both in the areas of humanitarian relief and assistance programmes and in advocacy for policy change.

The WCC policy statement on uprooted people adopted by the Central Committee in 1995, emphasized the increasingly grave plight of refugees and migrants in a time of escalating conflicts around the world. Amongst others the Statement noted:

"War, civil conflict, human rights violations, colonial domination and persecution for political, religious, ethnic or social reasons characterise every region and are major causes of forced human displacement to-day. Severe breakdown of economic and social conditions that once provided people with the means to survive in these traditional communities and in their own countries is accelerating the movement of the people."

The Statement went on to challenge the member churches of the WCC and related organisations to join in campaigns to uphold life and dignity, promote justice and peace in the world and accompany uprooted people.

In a Resolution adopted in January 2001, the WCC Executive Committee renewed "its call upon the churches in all regions to offer support, solidarity and accompaniment to those who have been forced to leave their communities, and to strengthen their own churches and ecumenical ministries with uprooted people"

In view of its ongoing work with uprooted people the Commission of Churches on International Affairs of the World Council of Churches would like to bring to the attention of this Commission on Human Rights, situations in which Internally Displaced Persons (IDPs) and Refugees are generally treated. This we have highlighted by illustration of situations of detention of IDPs and refugees in Sri Lanka and Australia respectively. In both cases, victims of persecution are forced to suffer indignities and various types of serious violations of human rights. Their basic human right to freedom of movement is limited by arbitrary detention policies. They suffer economic hardship, psychological deprivation, and the lack of access to due process of law. Many of those forced to flee their communities in Sri Lanka or to seek protection in Australia have already suffered the consequences of war and human rights violations, including loss of family members, torture and imprisonment. They are doubly victimised when subjected to arbitrary detention by those from whom they seek protection

The situations giving rise to displacement of refugees and Internally Displaced Persons (IDPs) are often a complex mixture of political repression, armed conflicts, ethnic discord and other factors. The problems faced by refugees and IDPs are not confined to any one particular region, they are widespread and growing. In fact, the presence of refugees and IDPs has become a permanent phenomenon in many regions. Despite representations and appeals by Churches around the globe inadequate attention is paid to their plight which is compounded by restrictive state policies and discriminatory practices. On pretext of national security, the State often derogates from adopting and practising internationally accepted norms and standards of human rights in respect of refugees and IDPs. This practice should be challenged and denounced.

Sri Lanka

The ethnic conflict in Sri Lanka has gone on for around two decades during which time many people have lost their lives on both sides of the ethnic divide. Since 1983, when the conflict escalated, Sri Lankan society has been engulfed with violence, hatred and destruction.

The culture of impunity and the breakdown of the rule of law have led to all pervasive violence and systematic violation of fundamental rights, especially those of Tamil people. The ongoing conflict has repeatedly uprooted thousands of Tamils, many of whom live as IDPs in various parts of the country under degrading and inhuman conditions. Some of these persons have been forced to move repeatedly from one inhospitable area to another. The IDPs belonging to the Tamil communities in the North and the East have suffered much at the hands of the Sri Lankan police and military. They have been subjected to discriminatory practices and policies, brutality, harassment, torture and illegal detentions.

On grounds of national security, the Sri Lankan Government has confined large sections of the Tamil population as IDPs in Vavuniya district and its surrounding areas. All of those detained are affected by these severe restrictions on freedom of movement. Of particular concern are the hardships experienced by elderly, the infirm, women and children. The living conditions in these areas are deplorable. There are inadequate housing facilities, poor sanitation and extremely limited opportunities for education, health care and transportation. The ominous presence of military and police personnel, with check-points everywhere means that this whole area is under a virtual state of siege.

Under the provisions of the Universal Declaration of Human Rights
"Everyone has a right of freedom of movement and residence within the border of each state".

Articles of the International Covenant on Civil and Political Rights.
(7) "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular .....".
(9) "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law".

Article 14 (h) of the Sri Lanka Constitution guarantees: "Every citizen is entitled to freedom of movement and of choosing his (her) residence".

The right to free movement is prerequisite to the development of the individual. The Government on the pretext of maintaining national security, national economy and public order has however curtailed this fundamental right of individuals to travel within their own country. It considers Vavuniya as a transit point between the Government-held and rebel-controlled areas in the Northern Province. People who reside here were displaced as a result of fighting between the Sri Lankan armed forces and the LTTE in 1996-97. Since then Vavuniya and its surrounding areas are under the control of the Sri Lankan Government, that has restricted free movement of IDPs through the enforcement of a system of "passes".

Pass Systems and its various Categories

The Pass system applicable in Vavuniya is comprehensive, cumbersome and extremely complicated. Though legally binding on all, it is applied mainly to IDPs of Tamil descent.

The Pass System comprises twenty different categories. Through this system of passes the Government has severely restricted the movement of the Tamil minority in clear violation of its obligation under the International Human Rights Law.

Australia

The Government of Australia has adopted a policy of discriminating between people granted refugee status since October 1999. At this time, a provision was made for those arriving onshore to receive a temporary protection visa with limited rights following grant of refugee status under Australian law. Prior to the granting of any visa or residency rights all onshore asylum seekers are mandatorily detained.

Since mandatory detention of asylum seekers was instituted some ten years ago, Australia has extended this policy to asylum seekers detained in one of the immigration detention facilities maintained by the Department of Immigration and Multicultural Affairs, but administered by a private company, Australian Correctional Management Pty Limited, the parent company of which is Wackenhut Corporation. Locations include:

- Villawood Immigration Detention Centre (IDC) in Sydney, established in 1976.
- Maribyrnong IDC in Melbourne, established in 1966.
- Perth IDC, established in 1981.
- Immigration Reception and Processing Centre (IRPC) in Port Hedland, Western Australia, (a remote regional town in - the north west), established in 1991.
- Curtin IRPC in Derby, Western Australian, (located 40 km from Derby further north west on the edge of a desert re-commissioned in September 1999.
- Woomera IRPC in Woomera, South Australia, (a remote area some 1500 km from the nearest capital city) commissioned in November 1999 and
- A new centre about to be established at Christmas Island off the coast of Western Australia, the status of which is yet to be confirmed.

Australian's policies of mandatory, unlimited detention of all asylum seekers arriving on its territory sets it apart from virtually all other developed countries. Individuals whose asylum claims are denied and who cannot be returned to their countries of origin face unlimited detention. Moreover, there are concerns about the conditions of the detention centre which are not open to the public or to any systematic review process. Successive investigations, both by independent authorities and by a parliamentary committee, have all expressed serious concerns about conditions. Most recently the Inspector of Prisons in Western Australia stated that the Curtin IRPC failed to meet both national and international standards.

The largest detention centres in Australia are located in isolated areas remote from capital cities. This is problematic on several fronts. First, the lack of visibility for the public means that "out of sight is out of mind". Second, it is extremely difficult for churches or NGOs to access remote centres to provide support services. The third problem is that the remote locations make it difficult for churches and NGOs to provide independent scrutiny of practices within the detention centre.

Several riots have taken place in the detention centres. These are indications of a lack of management expertise and the degree of frustration and distress felt by those incarcerated.

Children and families in detention are the most vulnerable of detainees. Currently in Australia there are 73 unaccompanied minors in open detention centres. There is little official supervision of these children and special provision for their needs is adhoc, frequently dependent on the good graces of particular staff members or other detainees. High levels of depression and anxiety exist amongst all detainees, including parents. This leaves children in a potentially vulnerable position. Detention centres are administered by the national arm of government, but local state governments have the responsibility for child and family services. This expertise is therefore not easily available to detention centres and in some cases is

resented if offered.

Education for children within the detention centres is also limited, falling far below the standard which is offered to Australian children. There is some attempt to send a very select few to local schools. This has been a good experience for the children and the school, but is very limited by the number of students and the resources available. For instance children who have some English are able to access the Australian school system with little extra resource allocation. It is problematic for parents of children attending these schools to be assured that their children are being adequately cared for as they are not free to visit the school.

Asylum seekers in detention centres in Australia are severely disadvantaged, but the most distressing to people generally is the fact of detention, the feeling of isolation and the great uncertainty which surrounds them.

The Commission on Human Rights should call on the Sri Lanka and Australian governments to:
- review their policies of detention of IDPs and refugees-
- fulfil their obligations under the International Human Rights regime.
- provide access to NGOs, journalists and others to the detention centres.
- in the case of Sri Lanka, allow Sri Lankan citizens to exercise their right to free movement within the borders of their country, including elimination of the pass system.
- in the case of Australia, end its policy of mandatory detention of all asylum seekers

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